COPY

No. 98-8384

(18)

Supreme Court, U.S.
FILED
AUG 20 1999
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

TERRY WILLIAMS, *Petitioner*,

v.

JOHN B. TAYLOR, Warden, *Respondent*.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF AMICI CURIAE STATES OF CALIFORNIA, ALABAMA, ALASKA, ARKANSAS, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, IDAHO, ILLINOIS, KANSAS, LOUISIANA, MARYLAND, MASSACHUSETTS, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA, OREGON, PENNSYLVANIA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, WASHINGTON, AND WEST VIRGINIA IN SUPPORT OF RESPONDENTS

BILL LOCKYER
Attorney General
DAVID DRULINER
Chief Assistant Attorney General
DANE R. GILLETTE
Senior Assistant Attorney General
DONALD E. DE NICOLA
Deputy Attorney General
*WARD A. CAMPBELL
Deputy Attorney General
*Counsel of Record
1300 I St., Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5251
Fax: (916) 324-2960
Counsel for Amici Curiae

BEST AVAILABLE COPY

38 pp

Bill Pryor
Attorney General
Alabama

Bruce M. Botelho
Attorney General
Alaska

Mark Pryor
Attorney General
Arkansas

Ken Salazar
Attorney General
Colorado

John M. Bailey
Attorney General
Connecticut

M. Jane Brady
Attorney General
Delaware

Robert A. Butterworth
Attorney General
Florida

Thurbert E. Baker
Attorney General
Georgia

Alan G. Lance
Attorney General
Idaho

James E. Ryan
Attorney General
Illinois

Carla Stovall
Attorney General
Kansas

Richard P. Ieyoub
Attorney General
Louisiana

J. Joseph Curran, Jr.
Attorney General
Maryland

Thomas F. Reilly
Attorney General
Commonwealth of
Massachusetts

Michael C. Moore
Attorney General
Mississippi

Jeremiah W. (Jay)
Nixon
Attorney General
Missouri

Joseph P. Mazurek
Attorney General
Montana

Don Stenberg
Attorney General
Nebraska

Frankie Sue Del Papa
Attorney General
Nevada

John J. Farmer, Jr.
Attorney General
New Jersey

Patricia A. Madrid
Attorney General
New Mexico

Michael E. Easley
Attorney General
North Carolina

Heidi Heitkamp
Attorney General
North Dakota

Betty D. Montgomery
Attorney General
Ohio

W.A. Drew Edmondson
Attorney General
Oklahoma

Harry Meyers
Attorney General
Oregon

D. Michael Fisher
Attorney General
Commonwealth of
Pennsylvania

Charles M. Condon
Attorney General
South Carolina

Mark Bennett
Attorney General
South Dakota

Paul G. Summers
Attorney General
Tennessee

John Cornyn
Attorney General
Texas

Jan Graham
Attorney General
Utah

Christine O. Gregoire
Attorney General
Washington

Darrell McGraw, Jr.
Attorney General
West Virginia

TABLE OF CONTENTS

	Page
INTEREST OF AMICI CURIAE	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
I. THE STATUTORY LANGUAGE AND CONGRESSIONAL HISTORY OF 2254(D) DEMONSTRATE THAT CONGRESS ESTABLISHED A RULE OF DEFERENCE TO REASONABLE STATE COURT DECISIONS IN FEDERAL HABEAS CORPUS PROCEEDINGS	4
A. The Language of 2254(d) Reveals and Reflects Its Legislative History	4
B. Legislative History Supports Amici's Construction of 2254	13
CONCLUSION	26

TABLE OF AUTHORITIES

Page

Cases

Alessi v. *Raybestos-Manhattan Inc.*,
451 U.S. 504, 522 (1981) 11

Anderson v. Creighton
483 U.S, 635, 639 (1987) 5-7

Arizonans for Official English v. Arizona
520 U.S. 43, 58 n.11 (1997) 25

Boyde v. California
494 U.S. 370(1990) 9

Brady v. Maryland
373 U.S. 83 (1963) 9

Butler v. McKellar
494 U.S. 407, 414 (1990) 5, 6, 10, 21

C.I.R. v. Keystone Consolidated Industries, Inc.
508 U.S.152, 159 (1993) 6

Caspari v. *Bohlen*
510 U.S. 383, 114 S. Ct. 948, 956 (1994) 10

Chevron U.S.A. v. Natural Resources Defense Council
467 U.S. 837, 843-844 & fn. 11 (1984) 11

Chicago & Northwestern Transportation Co. v. *Coil Brick & Tile Co.*
450 U.S. 311, 317 (1979) 11

TABLE OF AUTHORITIES, CONT'D

Drinkard v. Johnson
97 F.3d 751, 769 (5th Cir. 1996) 7, 9

FEC v. Democratic Senatorial Campaign Comm.
454 U.S. 27, 38-39 (1981) 11

Florida Lime & Avocado Growers Inc. v. *Paul,* 373 U.S. 132, 142 (1963) 11

Furman v. Wood
169 F.3d 1230, 1232 (9th Cir. 1999) 9

Gibbons v. *Ogden*
9 Wheat 1, 211 (1924) 11

Graham v. *Collins*
506 U.S. 461, 467 (1993) 10

Green v. Bock Laundry Machine Co.
490 U.S. 504, 521 (1989) 6

Green v. French
143 F.3d 865, 870 (4th Cir. 1998) 3, 5

Green v. French
143 F.3d 865, 870 (4th Cir. 1998) 7

Grimes v. *City and County of San Francisco*
951 F.2d 236, 241 (9th Cir. 1991) 11

Harlow v. Fitzgerald
457 U.S. 800, 818 (1982) 5, 6, 20

TABLE OF AUTHORITIES, CONT'D

Harpster v. State of Ohio
128 F.3d 322, 327 (6th Cir. 1997.) 9

Holman v. Gilmore
126 F.3d 876, 880 (7th Cir. 1997) 7

Huddleston v. United States
415 U.S. 814, 831 (1974) 4

Kelly v. *Robinson*
479 U.S. 36, 47 (1986) 6

Lambrix v. Singletary
520 U.S. 518, 538 (1997) 7

Lindh v. Murphy
96 F.3d 856, 870 (7th Cir. 1996) 7, 9

Lindh v. Murphy
521 U.S. 320, 333 n.7 (1997) 1

Lockhart v. *Fretwell*
506 U.S. 364, 373 (1993) 10

Matteo v. Superintendent SCI Albion
171 F.3d 877, 900 (1999) (Becker, C.J., conc.) 9

Miles v. Apex Marine Corp.
498 U.S. 19, 32 (1990) 22

Neeley v. Nagle
138 F.3d 917, 923-4 (11th Cir. 1998) 9

TABLE OF AUTHORITIES, CONT'D

Negonsott v. Samuels
507 U.S. 99, 106 (1993) 13

NLRB v. Fruit & Vegetable Packers & Warehousemen Local 760,
377 U.S. 58, 66 (1964) 15

O'Dell v. Netherland
521 U.S. 151, 156 (1997) 7

Penry v. Lynaugh
492 U.S. 302 (1989) 12

Saffle v. *Park*
494 U.S. 484, 488 (1990) 10

Sawyer v. Smith
497 U.S. 227, 236 (1990) 5, 10

Smith v. Robbins
No. 98-1037 (cert. granted March 8, 1999) 12

Stone v. Powell
428 U.S. 465 (1976) 13, 14

Strickland v. Washington
466 U.S. 668 (1984) 9

Stringer v. *Black*
503 U.S. 222, 225 (1992) 10

Stringer v. *Black*
503 U.S. 222, 227, 237 (1992) 7, 12

TABLE OF AUTHORITIES, CONT'D

Teague v. Lane
489 U.S. 288 (1989) *passim*

Thornburg v. Gingles
478 U.S. 30, 75 (1985) 23

United States v. *Fowlie*
24 F.3d 1059, 1066-1067 (9th Cir. 1994) 21

United States v. *Leon*
468 U.S. 897 (1984) 20, 21

United States v. *Shabani*
513 U.S. 10, 133 (1994) 6

United States v. Turkette
452 U.S. 576, 580 (1981) 4

United States v. Ursery
518 U.S. 267 (1996) 18

Withrow v. Williams
507 U.S. 680 (1993) 14, 25

Wright v. West
505 U.S. 277, 312-3 *passim*

Statutes

28 United States Code
§ 2244(b)(2)(A) 5
§ 2254(d) 1-7, 13

TABLE OF AUTHORITIES, CONT'D

§ 2254(d)(1)	5
§ 2254(e)	5
§ 2264(a)(2)	5

Other Authorities

132 Cong.Rec. S4211 (SB. 2301) (1986)	14
133 Cong.Rec. S18397 (SB.1970) (1987)	14
135 Cong.Rec. S412 (SB.88) (1989)	14
137 Cong.Rec. E920 (HR. 1400)	14
137 Cong.Rec. S3192, S8558, S8573 (SB. 635) (1991) citing S.Rep. No. 226, 98th Cong., 1st Sess. (1983)	14
137 Cong.Rec. S8622, S8649, S8656, S8649, S8665, S8558	14
138 Cong. Rec. S2693 (1992)	14
141 Cong. Rec. 7843-7844 (Sen. Biden)	22
141 Cong. Rec. S4590-S4596 (Sen. Hatch)	13, 14
141 Cong. Rec. S7842	11, 18
141 Cong. Rec. S7843	21
141 Cong. Rec. S7846-7847	14, 15

TABLE OF AUTHORITIES, CONT'D

141 Cong.Rec. S 7848-7849	20
141 Cong.Rec. S76 (SB. 3) (1995)	14
141 Cong.Rec. S7479, S7803	13
141 Cong.Rec. S7597 (May 26, 1995)	15
141 Cong.Rec. S7787, S7829 (June 6-7, 1995)	16
141 Cong.Rec. S7841	15
142 Cong. Rec. S3440 (Sen. Moynihan)	22
142 Cong.Rec. H3305 (1996)	15
142 Cong.Rec. S3458, S3465 S3470-3472 (April 17, 1996)	23
142 Cong.Rec. S3472 (April 17, 1996)	23
Anti-Terrorism and Effective Death Penalty Act of 1996	4, 5, 13, 23
Cong.Rec. S568 (SB.239) (1985)	14
House Conf. Rep. No. 104-518, 1996 U.S. Code & Admin. News 994	23
O'Connor, *Trends in the Relationship between the Federal and State Courts from the Perspective of a State Court Judge* 22 Wm. & Mary L.R. 801, 815 (1981)	2

TABLE OF AUTHORITIES, CONT'D

Remington, *Change in the Availability of Federal Habeas Corpus: Its Significance for State Prisoners and State Correctional Programs* 85 Mich.L.R. 570, 575-579 (1986) 14

Federal Habeas Corpus Review of State Judgments 22 U.Mich.J.L.Rev. 901 (1989) SB 2301, 99th Cong., 2d. sess., § 5 (1986) 14

Sutherland Stat. Const. 325 [§ 48.04] (5th ed.) 22

Yackle, *A Primer on the New Habeas Corpus Statute* 44 Buff.L.R. 381, 416 (1996) 6

IN THE SUPREME COURT OF THE UNITED STATES

No. 98-8384

TERRY WILLIAMS, *Petitioner*,

v.

JOHN B. TAYLOR, Warden, *Respondent*.

INTEREST OF AMICI CURIAE

Amici states' interests are served by resolving the questions presented as to the interpretation of the "new, highly deferential" standard of review in 28 U.S.C. section 2254(d).[1] Amici defend presumptively valid state court judgments against federal habeas corpus challenges. Since the 1950's, the states have advocated legislative reform of federal collateral review and supported the Anti-Terrorism and Effective Death Penalty Act's purpose to enhance amici's capacity to control their own adjudications. *Lindh v. Murphy*, 521 U.S. 320, 333 n.7 (1997). State courts are equal partners with federal courts in our national judicial system. Amici states are principally responsible for the administration of criminal justice and they have a recognized interest in the finality of their courts'

---

1. Hereinafter also referred to as "2254(d)." Amici's brief is confined to the statutory construction and legislative history of 2254(d) as they relate to questions 2 and 3 of the questions presented in this case. Amici are confident Respondent will satisfactorily brief the other substantive issues presented in this case.

judgments. They are equally bound by the Constitution and subject only to the decisions of this Court. Section 2254(d) accords state courts the deference to which they are entitled in a system of federalism consistent with the secondary and limited role of federal collateral review. "In this way perhaps parity will become less a myth and more a reality." O'Connor, *Trends in the Relationship between the Federal and State Courts from the Perspective of a State Court Judge*, 22 Wm. & Mary L.R. 801, 815 (1981).

SUMMARY OF ARGUMENT

The new 2254(d) standard of review for habeas corpus cases precludes relief whenever the state court adjudicated the merits of a federal claim -- whether the adjudication comprised a question of law, a "mixed question" of law and fact, or a fact question -- and the prisoner's entitlement to relief would have been debatable among reasonable jurists, regardless of whether the federal court otherwise would have resolved the claim differently. The language and structure employed in 2254(d), the Congressional debate, and Congress' awareness of this Court's jurisprudence as to qualified immunity, the exclusionary rule and the rule of non-retroactivity, evince a legislative intent to bar relief, on all claims subjected to a state merits adjudication, unless the state court had acted unreasonably. They also reflect that the determination of reasonableness is to made in accord with the non-retroactivity doctrine of *Teague v. Lane*, 489 U.S. 288 (1989) (plurality op.), and that the determination applies to adjudications of mixed questions of law and fact pursuant to "clearly established" federal law as determined by this Court. In this way, 2254(d) operates as the "deference" standard described by every member of Congress who spoke to the question in the debates leading to enactment. It does not preclude federal review merely because the states offer a "full and fair opportunity" to raise constitutional claims. However, the Fourth Circuit was correct when it interpreted 2254(d) as authorizing habeas relief "only when the state courts have decided the question by interpreting or applying the relevant precedent [of this Court] in a manner that reasonable jurists would all agree is unreasonable." *Green v. French*, 143 F.3d 865, 870 (4th Cir. 1998).

ARGUMENT

I.

THE STATUTORY LANGUAGE AND CONGRESSIONAL HISTORY OF 2254(D) DEMONSTRATE THAT CONGRESS ESTABLISHED A RULE OF DEFERENCE TO REASONABLE STATE COURT DECISIONS IN FEDERAL HABEAS CORPUS PROCEEDINGS

As part of the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), Congress amended 28 U.S.C. section 2254(d) to read as follows:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim --
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

A. The Language of 2254(d) Reveals and Reflects Its Legislative History

"In determining the scope of a statute, we look first to its language." *United States v. Turkette*, 452 U.S. 576, 580 (1981). The rules of statutory construction "exist to discover . . . the Congressional will." *Huddleston v. United States*, 415 U.S. 814, 831 (1974).

Under the terms of 2254(d)(1), relief on a claim adjudicated in state court "shall not be granted" unless the adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, *clearly established* Federal law, as determined by the Supreme Court of the United States." (*Emphasis added.*) These words resonate settled meanings. The phrase "clearly established" is a special term familiar from this Court's jurisprudence in the field of qualified immunity for government officials charged with violations of federal law. *See Anderson v. Creighton*, 483 U.S, 635, 639 (1987); *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982).

As this Court has also recognized, there is an obvious consanguinity between the concept of "clearly established" law in the immunity area and the *Teague* doctrine of non-retroactivity for new rules of constitutional law. *Teague v. Lane*, 489 U.S. at 288 (plurality op.); *Sawyer v. Smith,* 497 U.S. 227, 236 (1990); *Wright v. West*, 505 U.S. 277, 312-3 (Souter, J.conc. op.). The AEDPA generally ratified this Court's *Teague* non-retroactivity doctrine prohibiting habeas corpus relief predicated upon the application of a "new rule"of constitutional law about which reasonable judges might have debated at the time of finality of the state criminal judgment. *See Sawyer,* at 234; *Butler v. McKellar*, 494 U.S. 407, 414 (1990). In unmistakable references to the *Teague* rule in the relief-restricting habeas corpus reforms of the AEDPA, Congress ratified the non-retroactivity doctrine as part of the context in which the reforms, including that of 2254(d), would operate.[2] It cannot reasonably be denied

---

2. The AEDPA repeatedly references the "new rule" and "retroactivity" doctrine for collateral review. *See, e.g.* 28 U.S.C. § 2244(b)(2)(A) (successive petitions), §2244(d)(1)(C) (period of limitations), § 2254(e) (evidentiary hearings), § 2264(a)(2) (unexhausted claims). *See Green*, 143 F.3d at 873-874. Petitioner and counsel of record for amicus ACLU both agree that the AEDPA at

that Congress understood that the *Teague* doctrine in fact would continue to operate in the broader context of the reforms.

Thus, Congress intended to import the judicially-recognized meaning of "clearly established law" from the immunity field and the *Teague* doctrine of non-retroactivity to the habeas corpus reform embodied in 2254(d). *See C.I.R. v. Keystone Consolidated Industries, Inc.*, 508 U.S.152, 159 (1993). There is no indication in either the plain language of the statute or its legislative history that Congress intended to change the judicially created interpretation or meaning of this language. *Kelly* v. *Robinson*, 479 U.S. 36, 47 (1986); *Green* v. *Bock Laundry Machine Co.*, 490 U.S. 504, 521 (1989); *United States* v. *Shabani*, 513 U.S. 10, 133 (1994).

The 2254(d) requirement that a state adjudication be evaluated by reference to what had been "clearly established" law is highly significant. It replicates *Teague* in validating "reasonable, good-faith interpretations" of the law at the time of the challenged action, *Butler*, 494 U.S. at 414. And it confirms the plain statutory language according deferential review of "mixed questions" involving the application of federal law to the peculiar facts of each case.

Congress was presumably aware in 1996 that under the *Harlow* line of cases, government officials were entitled to immunity "as long as their actions *could reasonably have been thought* consistent with the rights they are alleged to have violated." *Anderson*, 483 U.S. at 638-641 (*emphasis added*). The government official was broadly protected under the "clearly established law" standard unless "in light of pre-existing law" the unlawfulness of his conduct in the circumstances was

---

least "codifies" *Teague*. Amici note that ACLU's counsel earlier propounded exactly the opposite. Yackle, *A Primer on the New Habeas Corpus Statute*, 44 Buff.L.R. 381, 416 (1996).

"apparent." *Id.* at 640. For example, immunity applied to "reasonable[e] but mistaken[]" evaluations on whether a peculiar array of facts rose to the level of "probable cause" to qualify a search and seizure as "reasonable" under the Constitution. *Id.* at 641.

Section 2254(d), therefore, prescribes deferential review for objective reasonableness for any claim adjudicated on the merits by the state court, even a "mixed question" as in *Anderson*, as measured by reference to clearly established law." Section 2254(d) embraces and enlarges the *Teague* inquiry. *See Wright v. West*, 505 U.S. at 291 n. 8 (Rehnquist, C.J., Thomas, Scalia, JJ. plur. op.), 304-305 (Blackmun, Stevens, O'Connor, JJ. conc. op.), 307 (Kennedy, J. conc. op.). Under *Teague* and its progeny, relief from custody depends upon review for "objective reasonableness" of the state court result, measured by whether reasonable jurists at the time of finality might have debated the validity of the purported rule of law proffered by the prisoner or whether "all reasonable jurists" would have been of one mind in validating the federal claim so that "no other interpretation was reasonable." *Stringer* v. *Black*, 503 U.S. 222, 227, 237 (1992); *O'Dell v. Netherland*, 521 U.S. 151, 156 (1997); *Lambrix v. Singletary*, 520 U.S. 518, 538 (1997). Under 2254(d), review on any claim adjudicated on the merits is, in essence, a *Teague*-type inquiry into whether "the state courts have decided the question by interpreting or applying the relevant precedent in a manner that reasonable jurists would all agree is unreasonable." *Green v. French*, 143 F.3d 865, 870 (4th Cir. 1998); *accord*: *Drinkard v. Johnson*, 97 F.3d 751, 769 (5th Cir. 1996) ("[W]e can grant habeas relief only if a state decision is so clearly incorrect that it would not be debatable among reasonable jurists"); *see Lindh v. Murphy*, 96 F.3d 856, 870 (7th Cir. 1996), rev'd on other grounds, 521 U.S. 320, vacated and remanded; *Holman v. Gilmore*, 126 F.3d 876, 880 (7th Cir. 1997).

The conclusion that the "clearly established law" criterion prescribes *Teague*-plus deferential review for merits adjudications, even those involving "mixed questions," finds further support in other portions of the text of 2254(d). Even aside from the "clearly established federal law" language that applies to state adjudications across the board, the new standard explicitly provides that relief may not be granted unless, as noted above, the state adjudication "resulted in a decision that was *contrary to, or involved an unreasonable application* of, clearly established Federal law . . . ." (*Emphasis added.*)

Although amicus ACLU denies it (ACLU Br. 10), an "application" of federal law literally comprises an application of federal law to the particular facts of the case under review. The ACLU makes a failed attempt to conjure the notion of an "application of law" to a novel setting as something disconnected from an application of law to facts. (ACLU Br. 10.) But the statutory language does not speak of any "novel setting" limitation; instead, it speaks broadly of any "application" of federal "law." And, anyway, even the concept of an application of law to a novel setting ultimately can mean nothing more than the application of law to the facts that make up the novel setting. Conversely, nothing in the text of the statute explicitly excludes "application of law to facts" from the general provision providing for deferential review of state court adjudications involving an "application" of clearly established federal "law."

The deference to reasonable "applications of . . . clearly established federal law" to "mixed questions" is also clear from 2254(d)'s overall structure. It provides a relief-precluding standard of review for, in sequence, state court adjudications that result in rulings (1) that were contrary to clearly established federal law, (2) that involved an unreasonable application of clearly established federal law, or (3) that were based on an unreasonable determination of the facts. That hierarchical structure

itself is a parallel to legal questions, mixed questions, and fact questions. It mirrors the well-recognized continuum of "pure law," "mixed questions," and historical facts. Courts of Appeals have drawn the obvious conclusion from the structure and the text. *See Furman v. Wood*, 169 F.3d 1230, 1232 (9th Cir. 1999); *Neeley v. Nagle*, 138 F.3d 917, 923-4 (11th Cir. 1998); *Drinkard*, 97 F.3d at 767; *Lindh v. Murphy*, 96 F.3d at 767-8. And, even if one might doubt the formal parallel, the practical effect "probably will not lead to different results." *Harpster v. State of Ohio*, 128 F.3d 322, 327 (6th Cir. 1997.)[3]

Just as the "unreasonable application" standards drives home the deference accorded by the "clearly established federal law" criterion for mixed questions of law and fact, the "contrary to" standard confirms deferential review for reasonable-if-mistaken adjudications of pure questions of law. To say an adjudication is "contrary to" clearly established Supreme Court precedent denotes something more than saying that the adjudication in retrospect was incorrect. "Contrary" means "diametrically different," "opposite in character or nature," "mutually opposed." Webster's Third New

---

3. The ACLU concocts a construction in which federal courts would have de novo review of the application of "clearly established" rules of this Court while deferentially reviewing the state court's bare invocation of this Court's rule or application of "law" when this Court has not established a "rule", a "novel" setting. Under the ACLU's construction, de novo review would remain for state court decisions under such generalized rules and "mixed questions" as those enunciated by this Court in *Strickland v. Washington*, 466 U.S. 668 (1984), *Brady v. Maryland*, 373 U.S. 83 (1963) and *Boyde v. California*, 494 U.S. 370(1990). Neither the language nor legislative history support such feeble reform, such an unnatural reading of the statute, and such a legal gymnastic as applying nonexistent "law" in a vacuum. Petitioner's and ACLU's contrivance would nullify the "new, highly deferential" 2254(d) standard. *Matteo v. Superintendent, SCI Albion*, 171 F.3d 877, 900 (1999) (Becker, C.J., conc.).

International Dictionary 495; Random House College Dictionary ("1. Opposite in nature or character; diametrically or mutually opposed"). Consistent with this literal meaning, this Court's *Teague* cases indicate that decisions can be "contrary to" law when a particular result is strictly "dictated" or "compelled" by precedent, rather than when it is merely "governed" or "controlled" by precedent so that reasonable jurists might have reached differing conclusions. *See Butler*, 494 U.S. at 414-415; *see also Caspari* v. *Bohlen*, 510 U.S. 383, 114 S. Ct. 948, 956 (1994); *Graham* v. *Collins*, 506 U.S. 461, 467 (1993); *Lockhart* v. *Fretwell*, 506 U.S. 364, 373 (1993); *Wright*, 505 U.S. at 311 (Souter, J. conc.); *Stringer* v. *Black*, 503 U.S. 222, 225 (1992); *Sawyer* v. *Smith*, 497 U.S. at 234; *Saffle* v. *Park*, 494 U.S. 484, 488 (1990).[4] A state court that entertains a plausible opinion will not have its decision overturned under 2254(d). *See also Graham*, at 473-477.

The meaning is reinforced when the "contrary to" standard is placed in the proper context that requires it to be applied with reference to "clearly established federal law" as determined by this Court's jurisprudence. As noted above, the "clearly established federal law" rule provides deferential review for reasonable interpretations of law even if mistaken. It makes little sense to read the "contrary to" phrase to permit later second-guessing of a reasonable state adjudication by a federal court so that the standard would be at war with itself. For example, in deferentially reviewing an agency's construction of the statute it administers, to determine if the agency's action should be reversed under a statutory "contrary to law" standard, the federal court will uphold the action if based upon a "permissible construction" of the law. The

---

4. It is also significant that the "contrary to" standard in the *Teague* cases apply to questions of pure law. *Wright*, 505 U.S. at 294. (Thomas, I. plur. opn.) This further reenforces amici's construction of the "unreasonable application" as applying to mixed questions.

federal court's task is a narrow inquiry into whether the agency's construction is "sufficiently reasonable." "To satisfy this standard it is not necessary for a court to find that the agency's construction was the only reasonable one or even the reading the court would have reached. . . ." *FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 38-39 (1981).[5] The age-old standard of review under the Supremacy Clause for determining federal preemption of state law is whether the state law "interfere[s] with or [is] contrary to, the laws of Congress. . . ." *Gibbons* v. *Ogden*, 9 Wheat 1, 211 (1924). Preemption under this standard is not favored unless "the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained." *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142 (1963); *Chicago & Northwestern Transportation Co.* v. *Coil Brick & Tile Co.*, 450 U.S. 311, 317 (1979); *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 522 (1981).[6]

Petitioner and the ACLU say that reading the "contrary to" clause to apply to pure legal questions makes the clause a mere "cipher" employed only in the remote event that the state court fails to articulate a rule clearly established by this Court's cases. (P. Br. 39;

---

5. This standard was also referenced in the Senate debate. 141 Cong. Rec. S7842 (remarks of Sen. Biden referring to the "Chevron" case [*Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 843-844 & fn. 11 (1984)].)

6. The Federal Magistrate Law gives the district court judge the power to overturn non-dispositive orders by the Magistrate-Judge that are "clearly erroneous or contrary to law." While the district court judge makes an independent or plenary or de novo review of the magistrate's legal conclusions, the judge will uphold the order even if the judge would have issued a different order. *See, e.g. Grimes* v. *City and County of San Francisco*, 951 F.2d 236, 241 (9th Cir. 1991) ("The reviewing court [district court] may not simply substitute its judgment for that of the deciding court [magistrate].")

ACLU 9.) However, that has not been amici's experience under the *Teague* doctrine. *See, e.g. Stringer*, 503 U.S. at 225; *Penry v. Lynaugh*, 492 U.S. 302 (1989). Ironically, Petitioner alleges just such a "remote" transgression in this case: he says the state court misinterpreted the prejudice rule of the ineffective-counsel criteria to require a showing of an unfair trial rather than a showing of mere effect on the ultimate outcome. (P. Br. 11-22.) It might be true that few state adjudications will be discarded under the standard, just as this Court, in its *Teague* jurisprudence, has rarely identified a proffered rule as "old" or established and invoked it to grant habeas corpus relief to a state prisoner. But that would not make the "contrary to" language a nullity, any more than the *Teague* doctrine has been a nullity. The value of the "contrary to" standard as interpreted by the amici in this brief lies in, for one thing, providing a framework for analyzing all-too-common allegations of egregious violations of the clear constitutional law by the state courts. *See, e.g., Smith v. Robbins*, No. 98-1037 (cert. granted March 8, 1999) (claim that state court violated clear rule dictated in *Teague* sense by *Anders v. California*). In doing so, it promotes comity, efficiency, and finality by providing new *Teague*-plus protection, in instances where the state court adjudicated the merits of a prisoner's federal claim, so that criminal judgments based upon state-court interpretations of Supreme Court precedents within the range of reasonable debate will not be disturbed years afterward in later federal habeas corpus attacks.

B. Legislative History Supports Amici's Construction of 2254

Amici recognize that resort to legislative history and secondary materials is ordinarily unnecessary. However,

legislative history supports amici's construction of 2254(d). *Negonsott v. Samuels,* 507 U.S. 99, 106 (1993).

The Congressional AEDPA debate focussed on three distinct proposed standards of review: (1) the "deference" standard now set forth in 28 U.S.C. § 2254(d) (S. 735 as amended by the Specter-Hatch Amendment, No. 1199); (2) an "inadequate or ineffective" standard patterned after *Stone v. Powell*, 428 U.S. 465 (1976) (Kyl Amendment. No. 1211); and (3) the pre-AEDPA de novo review standard (Biden Amendment, No. 1224). The ensuing debate demonstrates that the Senate intended 2254(d) to be a rule of deference, most recently defined by Justice Kennedy as "saying that since the question is close the state-court decision ought to be deemed correct because we are in no better position to judge." *Wright,* 505 U.S. at 308 (Kennedy, J. conc. opn.) The ACLU's contrived suggestion otherwise finds no support in the history of the AEDPA.

The Specter-Hatch Amendment was initially a "consensus bill [S. 623, the "Habeas Corpus Reform Act of 1995] to enact meaningful reform of the Federal habeas corpus process." Among a series of features, the bill "ensures that proper deference is given to the judgments of State courts. . . ." 141 Cong. Rec. S4590-S4596 (Sen. Hatch). The bill was later folded into the AEDPA's predecessor, the Comprehensive Terrorism Prevention Act of 1995 (S. 735, Amendment 1199). 141 Cong.Rec. S7479, S7803. (May 25,1995; June 6, 1995)[7] Ultimately, the

---

7. The "consensus bill" comprised various provisions relating to timetables and omitting Senator Specter's proposal to eliminate the exhaustion requirement. 141 Cong.Rec. S4590-4596, S7847. Senator Specter spoke in opposition to the Biden Amendment which would have stricken the Specter-Hatch "deference" standard. He characterized his bill as a "reasonable compromise." He compared the Specter-Hatch amendment to the more "restrictive" House bill which limited review to "arbitrary" state court decisions. He did not characterize the Specter-Hatch Amendment any differently than did

amendment became part of the AEDPA. 142 Cong.Rec. H3305 (1996).

Subsequently, Senator Hatch described the standard now in 2254(d) as the "single most important provision in the habeas reform proposal . . . ." 141 Cong.Rec. S7846 (June 6, 1995); *see also id.* at S7841 (Sen. Biden's recognition of the review standard as "the single most

---

his co-sponsor Senator Hatch. 141 Cong. Rec. S7846-7847. Amici note that prior to the Specter-Hatch Amendment, previous Congresses had considered proposals to limit review to claims which had not received "full and fair" adjudication in state court. In 1986, SB 2301 was introduced in the Senate. The bill limited any claim of error to claims that had not been "fully and fairly adjudicated" in state court. SB 2301, 99th Cong., 2d. sess., § 5 (1986). The Department of Justice and the sponsor both explained that "fully and fairly adjudicated" included a result that was "reasonable" as opposed to the "full and fair opportunity" standard for review of Fourth Amendment claims under *Stone v. Powell*. However, the language was criticized for not being explicit about that distinction Remington, *Change in the Availability of Federal Habeas Corpus: Its Significance for State Prisoners and State Correctional Programs*, 85 Mich.L.R. 570, 575-579 (1986). There were repeated introductions of the unadorned "fully and fairly adjudicated" language. *See, e.g.* 131 Cong.Rec. S568 (SB.239) (1985); 132 Cong.Rec. S4211 (SB. 2301) (1986); 133 Cong.Rec. S18397 (SB.1970) (1987); 135 Cong.Rec. S412 (SB.88) (1989); 137 Cong.Rec. S3192, S8558, S8573 (SB. 635) (1991) citing S.Rep. No. 226, 98th Cong., 1st Sess. (1983) and *Federal Habeas Corpus Review of State Judgments*, 22 U.Mich.J.L.Rev. 901 (1989); 137 Cong.Rec. E920 (HR. 1400); 138 Cong. Rec. S2693 (1992); 141 Cong.Rec. S76 (SB. 3) (1995); *see also* Statement of Associate Deputy Attorney General Andrew G. McBride, House Subcomm. on Civil & Constitutional Issues (HR. 1400) (102nd Cong.) (June 27, 1991) Senator Specter supported bills with the "fully and fairly adjudicated" language although he had echoed the concerns about its definition. 137 Cong.Rec. S8622, S8649, S8656, S8649, S8665, S8558. The 2254(d) standard dealt with these concerns by explicitly articulating the "reasonableness" component that distinguishes deference from the "full and fair opportunity" limitation that still independently applies to Fourth Amendment claims on collateral review. *See, e.g. Withrow v. Williams*, 507 U.S. 680 (1993).

important provision" of the bill).[8] Senator Hatch explained that the standard would "allow a Federal court to overturn a State court decision only if it is contrary to clearly established Federal law or if it involves an 'unreasonable application' of clearly established Federal law *to the facts*, or if the State court's factual determination is unreasonable." 141 Cong.Rec. S7597 (May 26, 1995), emphasis added.[9] His description contemplated limits on review of questions of law, mixed questions, and questions of fact.[10]

On the other hand, the Kyl Amendment would have prohibited federal habeas corpus relief "unless the remedies in the courts of the State are inadequate or ineffective to test the legality of the person's detention." 141 Cong.Rec. S7787, S7829 (June 6-7, 1995). Proponents of the Kyl Amendment described Specter-Hatch as merely providing a "more deferential" standard of review as opposed to the Kyl Amendment's rigid procedurally oriented limits. *Id.* at 7830; *see also* comments by Senator Lott, *id.* at S7835. Both Senators Specter and Hatch

---

8. Amici properly rely on the explanations of the sponsors in giving meaning to 2254(d). The statements of opponents are referenced either to give meaning to the sponsors' statements or to illustrate the unanimity of opinion as to the deferential meaning of 2254(d). *See NLRB v. Fruit & Vegetable Packers & Warehousemen, Local 760*, 377 U.S. 58, 66 (1964).

9. Senator Biden, in opposition, agreed that Specter-Hatch would apply to "matters of fact and law at a Federal level." 141 Cong.Rec. S7841.

10. Amicus ACLU finds significance that the House of Representative adopted a provision that specifically referred "to the facts," but that language is not in 2254(d). (ACLU at 29.) The bill was passed by the House, but was not considered by the Senate. There is nothing in the legislative history to suggest that 2254(d) reflects a conscious rejection of superfluous "to the facts" language in a House bill that never made it over to the Senate. The Senate debate operated on exactly the opposite premise.

opposed the Kyl amendment because they supported retaining some postconviction habeas corpus review. *Id.* at S7834, S7836.

Debate then turned to the Biden amendment "deleting the rule of deference for habeas corpus." *Id.* at S7840. Senator Cohen opposed the "deference provision" of Specter-Hatch "requiring a Federal court to defer to a State court's reasonable interpretation and application of constitutional law." He favored federal courts retaining independent review over mixed questions of law and fact. *Id.* at S7838-S7839.

According to Senator Biden, Specter-Hatch would dramatically restrict[]" federal court power to decide that a State court "got it wrong." In the his view "Federal courts should exercise independent review while the Specter-Hatch bill requires Federal courts to defer to the State." He opposed federal court deference to "reasonable" state court decisions based on whether "reasonable minds could differ." According to Senator Biden, Specter-Hatch established "an extraordinary deferential standard . . . ." He acknowledged that to warrant habeas corpus relief under Specter-Hatch the state court decision "must have been unreasonable in light of Supreme Court law that is clearly established." The Biden amendment would "strike[] the deference rule and allow[] the current practice of independent review by the court." *Id.* at S7840-7842, S7486.

Senator Biden compared previous "battles" over the "full and fair" standard of habeas corpus review to the "inadequate or ineffective" standard in the Kyl amendment. Despite the express opposition of Senators Specter and Hatch to the Kyl amendment, Senator Biden asserted their amendment "essentially does the same thing" and "would have virtually the same effect" as a full and fair standard because "it would require deference to the State decision unless that decision were unreasonable." *Id.* at S7843; S7486, S7841 (Sen. Biden's reference to "the

so-called rule of deference, which has been known around here the last 20 years that I have been here as the full and fair rule") Senator Biden suggested that "independent review is the only sensible approach . . . ." Otherwise, he argued, the "deference rule" in Specter-Hatch would prevent a federal court from "correcting" a state court decision. *Id.* at S7845.

Senator Hatch explained the difference between his approach and Senator Biden's:

> I know there are people here who believe that only the Federal courts tell the truth. That just is not true. State courts, in many respects, are just as good, if not better, than the Federal courts--in these areas, just as good.

Id. at S7846.

Because state courts "are constrained to uphold the Constitution and faithfully apply Federal law" there "is simply no reason" for federal courts to "virtually retry" cases resolved by the state courts. *Id.* at S7846.[11]

Under the pre-AEDPA approach advocated by Senator Biden, federal courts had "virtual de novo review" of state court decisions. The Specter-Hatch amendment, however, required federal courts "to defer to the determination of State courts" unless that decision was

---

11. Ironically, during the Senate debate, Senator Biden argued that a federal "appeals court had recently held that a defendant could not be prosecuted criminally and have his properly forfeited under the civil forfeiture laws because of the double jeopardy clause prohibiting that. . . . It is not a Supreme Court ruling. Under this bill, a State court, which subsequently refused to follow that interpretation, could not be corrected by habeas corpus review because it could never get back into the Federal court system." 141 Cong.Rec. S7842. Of course, Senator Biden's hypothetical state court decision was vindicated when this Court corrected the federal appeals court on this issue. *United States v. Ursery*, 518 U.S. 267 (1996).

contrary to or an unreasonable application of federal law as determined by this Court. This "appropriate standard" allowed federal courts to overturn state decisions that "clearly contravene Federal law" or "improperly apply clearly established Federal law." Senator Hatch's objective of ending spurious federal habeas attacks on state judgments could not occur "without changing the standard under which these petitions are reviewed." In short, the disagreement over the appropriate standard of review involved "differing visions as to the proper role" of federal habeas corpus. *Id.* at S7846-S7848.

Senator Specter explained that 2254(d) required "deference to the determinations of the State court" unless the federal court found the state decision contrary to or an unreasonable application of this Court's precedent or resulted in a decision based on an unreasonable determination of the facts in light of the evidence. This was not as "restrictive" a standard as the House proposal to allow federal habeas relief only when the state court decision was "arbitrary". *Id.* at S7847. Or, in other words, equivalent to the Kyl "inadequate or ineffective" standard.

Senator Hatch returned to Specter-Hatch and asserted its purpose was to limit federal habeas review to unreasonable application of federal law by state courts. "It enables the Federal court to overturn State court decisions that clearly contravene Federal law" or "improperly apply clearly established Federal law." Senator Hatch added, "if the State court unreasonably applied Federal law its determination is subject to review by the Federal courts." Where the state decision is reasonable, however, there is no basis for federal court intervention. The contrary argument demonstrated a "fundamental[] distrust" of state courts that was "an insult to all of the wonderful, fine State court judges around this country." *Id.* at S7848.[12/]

---

12. In the course of his comments Senator Hatch stated that the

In particular, Senator Hatch said:

> What does this mean? It means that if the State court reasonably applied Federal law, its decision must be upheld. Why is that a problematic standard? After all, federal habeas review exists to correct fundamental defects in

---

standard in § 2254(d) "essentially gives the Federal court the authority to review *de novo* whether the State court decided the claim in contravention of Federal law." 141 Cong.Rec. S7848 (June 7, 1995), emphasis added. Cobbling together that passage with earlier remarks, the ACLU asserts from the emphasized passage that Senator Hatch conceded the AEDPA review standard still authorized de novo review of state court judgments for correctness as opposed to their reasonableness. (ACLU at 28.) Read in context Senator Hatch recognized only that a federal court would necessarily have to determine for itself the applicable Supreme Court precedent against which it would decide the reasonableness of the state court decision. This is no different than review under *Teague* or under the "good faith" exception to the exclusionary rule. *Wright*, 505 U.S. at 305 (O'Connor, J. conc.) Given the tenor of his remarks as a whole and when considered in context, any suggestion that Senator Hatch did not intend the enactment of a standard requiring federal court deference to reasonable state court interpretations and applications of this Court's decisions is disingenuous at best.

The ACLU similarly misinterprets comments made by Representative Hyde during debate in the House on the conference report supporting what is now the AEDPA. (ACLU Br. 28-29 n.50.) He noted that a federal judge "always reviews the State court decision to see if it is in conformity with established Supreme Court precedents, or if it has been misapplied. So it is not a blank, total deference, but it is a recognition that you cannot relitigate these issues endlessly." 142 Cong.Rec. H3602 (April 18, 1996). When read as whole instead of the truncated excerpt quoted by the ACLU, it is clear that Representative Hyde, like Senator Hatch, simply acknowledged that a federal court must determine the applicable precedent before considering the reasonableness of the state court's action. Representative Hyde also argued that there was no reason to believe that state judges would be "less sensitive" or "less scholarly" than federal judges. *Id.* at H3603.

> the law. If the State court has reasonably applied Federal law it is hard to say that a fundamental defect exists.
>
> The Supreme Court in Harlow versus Fitzgerald has held that if the police officer's conduct was reasonable, no claim of damages under Bivens versus Six Unknown Agents can be maintained.
>
> In Leon versus United States [sic], the Supreme Court held if the police officer's conduct in conducting a search was reasonable, no fourth amendment violation ensues or would obtain, and the court could not order suppression of the evidence obtained as a result of that search."

141 Cong.Rec. S 7848-7849.

Senator Hatch's dramatic twin invocations of *Harlow* and *Leon* are the most instructive and dispositive moments of the 2254(d) debate. The significance of the *Harlow* analogy has already been explained. In addition, *United States* v. *Leon,* 468 U.S. 897 (1984) held the exclusionary rule did not bar the admission of evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate even though the warrant was unsupported by probable cause. This Court found that "the affidavit related the results of an extensive investigation and, as the opinions of the divided panel of the Court of Appeals make clear, provided evidence sufficient to *create disagreement among thoughtful and competent judges* as to the existence of probable cause." *Id.* at 926. (emphasis added).

Significantly, the United States Supreme Court also cited *Leon* in *Butler* to support the proposition that the "new rule" principle of the *Teague* doctrine of non-retroactivity "validates reasonable, good-faith

interpretations of existing precedents made to state courts even though they are shown to be *contrary* to later decisions." *Butler*, 494 U.S. at 414. (italics added). *Butler* cites *Leon* to the effect that the exclusionary rule should not be applied to the police when "it cannot be expected . . . to deter objectively reasonable law enforcement activity." *Id.* citing *Leon, supra,* 494 U.S. at 918-919; *see also Wright,* 505 U.S. at 311 (Souter, J. conc.). The intent of the sponsors to establish a standard based on deference to "reasonable jurists" could not be clearer.[13]

Following this debate the Senate rejected the Kyl amendment, tabled the Biden amendment to strike the deference standard, and passed S. 735 with the Specter-Hatch version of habeas corpus reform. 141 Cong. Rec. at S7849-S7850, S7857, S7869, D691. In light of the debates 2254(d) was clearly intended to require federal habeas court deference to state court decisions unless the state court result was unreasonable in light of applicable precedent from this Court. A mere difference of opinion between state and federal courts would not permit the assumption that the federal court was "correct" and the state court "incorrect." In short, a state court decision which reasonably applies this Court's precedent cannot be incorrect, however much the lower federal court might disagree with the state interpretation.

The debate on the merits of deferential review of the state court's application of federal law to the individual facts of a case took place, moreover, in view of this

---

13. As Judge Reinhardt explained in *United States* v. *Fowlie,* 24 F.3d 1059, 1066-1067 (9th Cir. 1994) the review for the *Leon* exception is de novo, but the de novo inquiry is directed at "'whether the affidavit was sufficient to create disagreement among thoughtful and competent judges as to the existence of probable cause.'" *Id.* at 1607 quoting *Leon, supra.* In debate, Senator Biden agreed with the *Leon* analogy drawn by sponsor Senator Hatch. 141 Cong. Rec. S7843.

Court's earlier inconclusive consideration of the question in *Wright*, 505 U.S. 277. The prior state of the law, as reflected in a judicial opinion like *Wright*, is relevant to determining the intent underlying the statute. Vol.# Sutherland Stat. Const. 325 [§ 48.04] (5th ed.); *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990). And Congress in fact was aware of *Wright*. Senators Biden and Moynihan referred to *Wright* by name, and to Justice O'Connor's concurring opinion, as purported support for their argument against a standard that they acknowledged would require federal court deference to a state court's incorrect but reasonable legal determination. 141 Cong. Rec. 7843-7844 (Sen. Biden); 142 Cong. Rec. S3440 (Sen. Moynihan). Justice O'Connor's concurring opinion in *Wright* noted that Congress had considered taking the step of enacting a deferential standard for mixed questions in the past, 505 U.S. at 305-6 (conc. op.); and the plurality opinion, though declining to decide the point, had outlined an argument that *Teague* had implicitly questioned the propriety of de novo rather than deferential review of mixed questions and that logic dictated deference with respect to such questions along the lines of the kind of deference that already unquestionably existed for legal questions and factual question, *id.*, at 291-295 (plur. op.).

Congress manifestly intended to restrict the availability of habeas corpus relief for claims reasonably adjudicated in the state courts. In enacting 2254(d) and embracing across-the-board deferential review, Congress took the "far reaching" step this Court declined to take in *Wright*, at least partially because Congress had up until that time failed to endorse legislation for such review. In the course of doing so, the Senate echoed its earlier vote to reject Senator Biden's proffered amendment, which would have deleted the new standard from the bill entirely, a vote that itself was a vote against de novo review of mixed questions.

That both sides in the debate understood they were enacting a deference standard is further demonstrated by efforts to recommit following the conference report accompanying the AEDPA. The conference report explicitly stated that the agreed-upon habeas corpus reform "requires deference to the determinations of state courts that are neither 'contrary to,' nor an 'unreasonable application of,' clearly established federal law." House Conf. Rep. No. 104-518, 1996 U.S. Code & Admin. News 994. *Thornburg v. Gingles*, 478 U.S. 30, 75 (1985). In post-conference debate, some senators, including co-sponsor Senator Specter, expressed their concerns about any requirement that federal courts defer to state court legal determinations. *See, e.g.*, 142 Cong.Rec. S3458, S3465 S3470-3472 (April 17, 1996) (comments of Sen. Kennedy, Sen. Dodd, Sen. Specter respectively).[14/]

Responding to Senator Moynihan's concern that the "practical effect" of 2254(d) was to unconstitutionally suspend the writ of habeas corpus, Senator Hatch explained that the legislation involved only the "statutory form of habeas corpus," not the "Great Writ" contained in the Constitution. He explained that "deference to State law is good, because it just means that we defer to them if they have properly applied Federal law." Senator Hatch repeated that a federal court could intervene only if the state court decision were unreasonable since state courts no less than federal courts are obligated to enforce federal

---

14. According to Senator Specter, 2254(d) requires deference to state court findings of fact and to state court application of federal law to the facts, but "Federal courts will owe no deference to State courts' determinations of Federal law . . . ." 142 Cong.Rec. S3472 (April 17, 1996). Amici agree with Senator Specter that federal courts must determine the appropriate Supreme Court precedent. Any suggestion that the statute allows federal courts to reject state court interpretations of federal law simply because they disagree would be inconsistent with his earlier comments and the purpose of the statute.

rights and are just as capable of doing so. *Id.* at S3439, S3446-3447.

The standard enacted by Congress in 2254(d) is one of deference to state court determinations of law, facts, and application of law to facts. Both the proponents and opponents of this provision agreed the statute had this effect. It did not effectively eliminate federal habeas corpus review of substantive adjudications as the Kyl amendment might have done nor did it continue the de novo standard as Senator Biden hoped. Congress simply provided that a mere disagreement among state and federal courts on the reasonable interpretation and application of federal law is not alone sufficient to overturn a state criminal conviction.

Therefore, the drafters and Congress understood that the new standard of review would significantly restrict habeas corpus relief in those cases in which the state court actually adjudicated the prisoner's federal claim on its merits. Congress intended that the new standard would be not only consonant with *Teague*, but would afford even further protection for the finality of the state court judgment, including "mixed questions" of "clearly established" law. Indeed, Petitioner acknowledges that Congress meant, in the circumstances described in Section 2254(d), to augment *Teague*-type protection of final state judgments. (P. Br. 29-30.)[15] In order to prevail under 2254(d), a petitioner will need to show that the state court's adjudication of a constitutional claim, both in terms of the law invoked and the law as it was applied to the facts, achieved a result that no reasonable jurist would

---

15. Petitioner discerns, among the augmentations, the following: (a) evaluation of the state adjudication as of the time of the adjudication; (b) review with reference to clearly established law "as determined by the Supreme Court of the United States,"and, at least as noted in petitioner Williams' brief; (c) the elimination of the judge-made "exceptions" to the *Teague* rule. (P. Br. 29-31.)

have arguably reached. Any less of a showing substitutes the opinion of a federal court for that of a state court on matters about which only this Court may authoritatively speak. *See, e.g. Arizonans for Official English v. Arizona*, 520 U.S. 43, 58 n.11 (1997); *Withrow*, 507 U.S. at 723 (Scalia, J. conc.& dis.). Solely in the event of an irreconcilable conflict between this Court and the state court is a petitioner in custody in violation of the United States Constitution.

CONCLUSION

Amici respectfully request that the decision of the Fourth Circuit Court of Appeals be affirmed.

Dated: August 24, 1999.

Respectfully submitted,

BILL LOCKYER
Attorney General
DAVID DRULINER
Chief Assistant Attorney General
DANE R. GILLETTE
Senior Assistant Attorney General
DONALD E. DE NICOLA
Deputy Attorney General

*WARD A. CAMPBELL
Deputy Attorney General
*Counsel of Record

Counsel for Amici Curiae

WAC:sc